THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.19556 OF 1999

DATED: 13-8-2007

Between:

Md. Riaz

.. Petitioner

and

The Labour Court-II, Hyderabad, rep. by its Presiding Officer and another.

.. Respondents

THE HONOURABLE SRI JUSTICE C.V. RAMULU

WRIT PETITION NO.19556 OF 1999

ORDER:

This writ petition is filed being aggrieved by an award, dated 07.01.1999, made in I.D.No.26 of 1996 on the file of the Labour Court II, Hyderabad, insofar as denying the continuity of service, attendant benefits and backwages, while ordering reinstatement of the petitioner into service.

It appears, the petitioner, who was working as Driver with the A.P. State Road Transport Corporation (for short 'A.P.S.R.T.C.'), was removed from service, after conducting a detailed enquiry into the charge of absenteeism for a period of 25 days from 05.03.1995 to 29.03.1995. The petitioner, after exhausting the remedies of departmental appeal etc., ultimately, raised a dispute under Section 2-A (2) of the Industrial Disputes Act (for short 'the Act') before the Labour Court-II, Hyderabad. It was his case before the Labour Court that the enquiry was not properly conducted and the enquiry officer acted in a bias manner, and he was not given fair opportunity to defend himself and even otherwise there was absolutely no evidence to come to the conclusion that he absented without any reason. It was also his contention that even if the charge is proved, the punishment of removal from service is disproportionate to that of the misconduct proved.

The 2nd respondent-management filed a detailed counter denying the allegations made by the petitioner. It was stated that the petitioner absented from duties from 05.03.1995 to 29.03.1995 without obtaining prior sanction of leave. The petitioner reported to duty with a sick certificate i.e. private medical certificate issued by the Registered Medical Practitioner, to cover up his absenteeism. He failed to intimate the authorities about his sickness and produce the medical

certificate within 48 hours. The Traffic Inspector furnished the attendance particulars of the petitioner and reported that the petitioner had absented from duties for 50 days during the period from April 1995 to 14.12.1995 besides availing other leaves. The unauthorized absence of the petitioner caused lot of inconvenience to traveling public and resulted in cancellation of services, apart from loss of revenue to the Corporation. Further, the past conduct of the petitioner was also not satisfactory. Once he was suspended on his involvement in an accident case and a penalty of reduction of his pay into minimum of the time scale was imposed. Apart from that, his increments were also deferred as a punishment for unauthorized absence. It was further asserted that the enquiry was properly conducted and the petitioner was given full and fair opportunity to defend himself.

Before the Labour Court, though no oral evidence was adduced on either side and no document was marked on behalf of the petitioner, Exs.M1 to M15 were marked on behalf of the respondent-management.

After detailed consideration of the entire material placed before it, the Labour Court, while holding that the charge leveled against the petitioner is proved, held that the punishment of removal from service is disproportionate to that of the misconduct and, accordingly, directed the management to reinstate the petitioner as a fresh recruit driver, but denied continuity of service, attendant benefits and backwages. Aggrieved by the same, the present writ petition is filed.

The learned counsel for the petitioner strenuously contended that the Labour Court, having held that the punishment of removal from service is in disproportion to that of the misconduct, ought not to have

denied continuity of service and backwages. The earlier punishments suffered by the petitioner have nothing to do with the present misconduct and they themselves are very trivial in nature. Therefore, denial of other benefits is arbitrary and illegal.

On the other hand, the learned counsel for the 2nd respondent-management supported the award passed by the Labour Court and submitted that in the facts and circumstances of the case and in view of the fact that the past conduct of the petitioner was not clean, the Labour Court has rightly denied the continuity of service and backwages.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side. Perused the impugned award and other material made available on record.

Admittedly, the petitioner, who was appointed in the Corporation in the year 1988, was removed from service on 14.12.1995 for the misconduct of absenteeism. The period of absenteeism was only 25 days and the petitioner tried to justify the same by producing a medical certificate issued by a Registered Medical Practitioner. Further, the earlier punishments suffered by the petitioner have nothing to do with the present misconduct. In my opinion, the Labour Court ought not to have denied the long service of about 7 years rendered by the petitioner before his removal from service. However, denial of attendant benefits and backwages cannot be interfered with. Therefore, I deem it appropriate to modify the award passed by the Labour Court and, accordingly, the impugned award is modified as under:

"The respondent-management is directed to reinstate the

petitioner with continuity of service, but without any backwages and attendant benefits."

With the above modification, the writ petition is disposed of. There shall be no order as to costs.

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C.V. RAMULU, J

13th August, 2007.

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